IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9382 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIMAL PRAFULCHANDRA PUROHIT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9382 of 2004

MS MEGHA JANI for Petitioner No. 1

MR M R MENGDEY AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/10/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition

in order to quash and set aside the order dated 20/02/2004 passed by the Chief Controlling Revenue Authority in Appeal No. Stamp - Appeal - 32 - B - 48 01 and to declare that the petitioner is not required to pay any additional stamp duty on the Sale Deed Regd. at Sr.No.6124 in the Office of the Sub-Registrar, Jamnagar, on 20/07/2004.

2. It is the case of the petitioner that the property in question was purchased by Registered Sale Deed dated 20/07/2000, at Annexure-A to the petition, and the total area as reflected in the document at page 10, comes to approximately 70.60 sq.mtrs and the total built up area comes to approximately 760 sq.ft.. The petitioner requested the authority that Exemption Certificate may be granted pursuant to the Government Circular dated 19/05/1990 which came to be issued under the Bombay Stamps Act, 1958. It is also the case of the petitioner that since the carpet area of the flat was less than 50 sq.mtrs., the Sale Deed was not required to be evaluated under Section 32(A) of the said Act in view of the Circular of the State Government.

3. Admittedly, in the present case, a similarly situated person has been granted the said Certificate, which is clear from the document placed at Annexure-G to the petition. Therefore, the petitioner has approached this Court by way of this petition.

4. Ms.Jani for the petitioner has contented that the Sale Deed in question was exempted from the Provisions of the Bombay Stamp Act, in view of the Circular of the Government dated 19/05/1990. She has further contended that the notice dated 06/01/2001 issued to the petitioner clearly mentioned that the order would be passed after the expiry of the period of the last notice. However, the order was passed by the Deputy Collector, respondent no.3 herein, without issuing the last notice and without giving a reasonable opportunity of being heard to the petitioner.

5. Mr.M R Mengdey learned AGP has submitted that the petitioner had not requested before the respondent authority that when a similarly situated person has been granted the said Certificate, then the petitioner ought to have been issued with the same. He has submitted that, therefore, the matter is required to be remanded back for reconsideration.

6. Ms.Jani for the petitioner has disputed the contention raised by Mr.Mengdey. She has submitted that the aforesaid contention was in fact raised before the

authority, but, by an error it is not reflected in the order.

7. Having gone through the averments made in the petition as also the documents placed on record, I am of the opinion that when the property in question is situated in the same building and in the same area and when a similarly situated person has been granted the said Certificate, which is clear from the document placed at page 52 Annexure-G to the petition, then the authority ought to have granted the said Certificate to the petitioner also.

8. Therefore, without entering into the above controversy, ends of justice would be served, if the respondent authority is directed to reconsider the case of the petitioner and to give the petitioner the same treatment which has been given to Omprakash Muralidhar, the certificate of which is produced at Annexure-G to the petition dated 12/04/2001.

9. In the result, the petition is allowed. The order dated 20/02/2004 passed by the Chief Controlling Revenue Authority in Appeal No.Stamp - Appeal - 32 - B 48 - 01 is quashed and set aside and the Deputy Collector, respondent no.3 herein, is directed to reconsider the case of the petitioner for the issuance of the said Certificate, in view of the directions issued hereinabove. Rule is made absolute accordingly with no order as to costs.

(K. S. Jhaveri, J.)

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